



Publisher of Consumer Reports

October 18, 1996
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Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

RE: CC Docket No. 96-128 (FCC 96-388)
In the Matter of Implementation of the
Pay Telephone Reclassification and Competitive Provisions
in the Telecommunications Act of 1996

To the Secretary:

Enclosed herewith for filing with the Commission are an original plus fourteen copies of the Petition for Reconsideration of Consumers Union Southwest Regional Office, Center for Economic Justice, Public Citizen, Texas and Texas Citizen Action, in the above captioned matter. In addition, we are submitting two copies directly to the Common Carrier Bureau as requested.

Please acknowledge receipt by affixing an appropriate notation on the duplicate copy of this letter furnished herewith for that purpose and returning same to the undersigned in the enclosed, self-addressed envelope.

Sincerely,

Janee Briesemeister
Senior Policy Analyst

cc: Common Carrier Bureau

No. of Copies rec'd 0 + 14
List ABCDE



Southwest Regional Office

1300 Guadalupe • Suite 100 • Austin • Texas 78701-1643 • (512) 477-4431 • FAX (512) 477-8934



**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Operator Service Access and)
Pay Telephone Compensation)
)
Petition of the Pubic Telephone)
Council to Treat Bell Operating Company)
Payphones as Customer Premises)
Equipment)
)
Petition of Oncor Communications)
Requesting Compensation for)
Competitive Payphone Premises)
Owners and Presubscribed Operator)
Services Providers)
)
Petition of the California Payphone)
Association to Amend and Clarify)
Section 68.2(a) of the)
Commission's Rules)
)
Amendment of Section 69.2(m))
and (ee) of the Commission's Rules)
to Include Independent Public)
Payphones Within the "Public)
Telephone" Exemption from End User)
Common Line Access Charges)

CC Docket No. 96-128

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OCT 21 1996

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CC Docket No. 91-35

**PETITION FOR RECONSIDERATION BY
CONSUMERS UNION SOUTHWEST REGIONAL OFFICE
CENTER FOR ECONOMIC JUSTICE
PUBLIC CITIZEN, TEXAS
TEXAS CITIZEN ACTION**

1. Pursuant to Section 1.429 of the Federal Communications Commission ("FCC") Rules, Consumers Union Southwest Regional Office, the Center for Economic Justice, Public Citizen's Texas office, and Texas Citizen Action ("CU, et al.") hereby submit a Petition for Reconsideration of the FCC's Report and Order adopted September 20, 1996 in the above-captioned proceeding. CU, et al are non-profit public interest organizations in the state of Texas who frequently represent the interest of residential and low income consumers in telephone regulatory proceedings. Our groups opposed efforts in Texas to raise the price of a local coin payphone call in Texas because of the threat to universal service. CU, et al respectfully request the FCC's reconsideration of the plan to establish so-called market-based local rates at payphones.

2. CU, et al requests that the FCC reconsider its decision with respect to the pricing of intrastate payphone service rates, especially local coin calls, on two grounds. First, this decision represents a clear and unwarranted preemption of Texas' authority over intrastate ratemaking. Second, the FCC's decision to allow unrestricted local coin calling rates from payphones is clearly contrary to the public interest of the citizens of Texas and jeopardizes universal service in our state, which has a large low income population and a low rate of telephone subscribership.

The FCC Should Not Preempt the Intrastate Authority of States in this Matter

3. CU, et al, concurs with that portion of the *Petition for Reconsideration of the Public Utility Commission of Texas* filed in this proceeding, which argues that the local payphone pricing plan exceeds the authority of the FCC to implement Section 276(b)(1) of the Federal Telecommunications Act of 1996.

It is Contrary to the Goal of Universal Service and not in the Public Interest to Deregulate Local Payphone Rates.

4. The order states, “once competitive market conditions exist, the most appropriate way to ensure that PSPs receive fair compensation for each call is to let the market set the price for individual calls originated on payphones” (Report and Order ¶49). However, the payphone market is not competitive for the end user. The competition in payphones is for location, and location owners require substantial commissions from PSPs, thus increasing the rates charged to the end user. End users have no choice, but to use the phone or drive or walk to another location which may not necessarily have cheaper rates. Indeed, the order contemplates that when monopoly conditions such as those described above exist the state commissions would have the authority to require that payphones be placed in locations by competitive bidding. However, in Texas our commission does not have authority over location providers and could do nothing to prevent price gouging under the conditions described above.

5. The issue of payphone rates has been vigorously debated over the past year in Texas. The payphone industry sought to increase the local coin rate from 25 cents to a cap of 50 cents. CU, et al opposed the effort and were successful in convincing the Texas PUC that the increase was not warranted by cost, that the market for local coin calls in Texas is not competitive, and that universal service in our state will be threatened by such a rate increase as a significant number of Texas families rely on payphones as their primary phone. CU has filed comments in the Texas rulemaking proceeding, Project No. 14559, which discuss in detail the payphone market in Texas and the negative impact a payphone rate increase would have on consumers, particularly lower income consumers. These comments and related news articles are attached to this petition.

6. The payphone issue is complex and the FCC has put considerable effort in this rulemaking. We respectfully request that the FCC give serious consideration to this petition, as we are already well aware of the negative reaction of residential consumers to proposed rate increases for local coin calls in Texas..

Respectfully Submitted,

Consumers Union
Southwest Regional Office
1300 Guadalupe, Ste. 100
Austin, Texas 78701

Center for Economic Justice
1905 Kenwood Ave.
Austin, Texas 78704-3633

Public Citizen, Texas
1800 Rio Grande
Austin, Texas 78701

Texas Citizen Action
1714 Fortview Rd, Ste 103
Austin, Texas 78704-7659

October 18, 1996

By,



Janee Briesemeister
Senior Policy Analyst
Consumers Union
Southwest Regional Office



Publisher of Consumer Reports

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FILING CLERK

19 October 1995

Ms. Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, Texas 78757

RE: Project No. 14559

Dear Ms. Mueller:

Attached are an original and 13 copies of the Comments of Consumers Union on Project No. 14559, relating to Substantive Rule §23.54, Pay Telephones. Please file stamp the extra copy for our records.

Sincerely,

Janee Briesemeister
Senior Policy Analyst





Publisher of Consumer Reports

COMMENTS OF CONSUMERS UNION
BEFORE THE PUBLIC UTILITY COMMISSION
ON PROJECT NO. 14559
SUBSTANTIVE RULE 16 TAC §23.54,
RELATING TO PAY TELEPHONE PROVIDERS

19 October 1995

Consumers Union¹ submits the following comments on Project No. 14559, relating to pay telephone providers.

Local Coin Calls

The local coin rate was the subject of some controversy as HB 2128 was debated during the last legislative session. The pay telephone industry proposed increasing the local coin rate on a measured service basis. Initially the industry sought a maximum local coin rate of \$1.50 and finally settled on a 50 cent cap. However, Senator Rodney Ellis amended HB 2128 in the Senate Economic Development Committee to remove the 50 cent local coin rate. There was no opposition to his amendment.

It has been the policy of this state to promote affordability and availability of local phone service. Pay telephones are an important component of local service. Texans who travel for business, make emergency calls (other than 911) and those currently without a telephone in their homes are most affected by the local coin rate. Indeed, Texas has a significant number of households lacking phone service who are dependent on payphones to conduct their daily business, including looking for a job, calling their children's school or doctor, etc. (See Attachments 1-4). Pay telephones are the lifeline for many lower income Texans. The public interest demands that local coin calls remain affordable. If

¹Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education, and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with approximately 5 million paid circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.



the Legislature did not attach such a public interest obligation to payphones it would not have imposed rate caps and other consumer protections pertaining to payphone service.

In this rulemaking the Commission staff proposes to cap the rate for local coin calls at 25 cents (§23.54 (g)(1)(B)). Consumers Union supports the staff's proposal because it is in the public interest and supports the goal of universal telecommunications service. A 25 cent cap is also consistent with the legislative intent of HB 2128. In addition, we recommend that subparagraph (g)(1)(B) be clarified to ensure there will not be automatic rate increases for those local exchange carrier (LEC) payphones where a local coin rate of less than 25 cents was set in a rate case.

Response to Proposals Made at the Public Hearing on October 5

At the public hearing on Project No. 14559 representatives of the Texas Payphone Association, Southwestern Bell and GTE each testified in favor of local coin rates of 50 cents or greater.² In other words, payphone providers are requesting a 100% rate increase (a 500% increase for those phones still charging 10 cents). Consumers Union vigorously opposes such an outrageous rate increase.

A local coin rate increase is obviously contrary to the legislative intent of HB 2128. Why would the Legislature cap local rates for electing companies, but allow a 100% rate increase for local calls on payphones? Why would the Legislature cap other charges at payphones, including local calls made with calling cards, but allow a 100% rate increase for local coin calls? Why would the Legislature, after agreeing with industry arguments in favor of a 25 cent set use fee, then allow charges of more than 25 cents for a local coin call? One must stand the intent behind PURA Sec. 3.2625 on its head to come up with any rationale for a rate increase for local coin calls.

A 50 cent local coin call is also out of step with charges permitted in other states (See Attachment 5, NARUC Compilation of Coin Telephone Rates For Major Telephone Companies). A 50 cent local rate will give Texas the distinction of being the state with the highest payphone rates in the country³ while at the same time having one of the highest percentages of families without a phone in their home.

² See Transcript of the Hearing on Project No. 14559, October 5, 1995. Tr. at pp. 8-10 (TPA), Tr. at pp. 11-13 (SWB), and Tr. at p. 14 (GTE).

³In a few states with measured service the total cost of a call could be higher than 50 cents. However, at measured service charges of 10 cents for the first 5 minutes and 5 cents for every 3 minutes thereafter, only calls longer than 29 minutes would cost more than 50 cents.

Representatives of private payphone providers and LECs also claimed that a 50 cent local rate is cost justified and promised to submit supporting cost data with their formal comments. The Commission should not (and legally cannot) allow one interested party to submit rate data in a rulemaking with the intention of setting new rates without allowing other interested parties the right to seek discovery, cross examine witnesses, etc., through a contested case procedure. The Commission is justified in setting current rates as the rate cap in this rulemaking because those rates were initially set in a contested rate case following due process procedures.

Finally, in making their request for 50 cent local calls, several industry representatives claimed that a 50 cent rate is the appropriate price response in a competitive market. How can an industry justify a 100% rate increase and at the same time claim the market is competitive. The fact that all payphone providers claim a 50 cent rate is justified suggests collusion rather than competition.⁴

At the public hearing LEC representatives also claimed that because payphone services are included in Basket III (Subtitle H) the local coin cap should not apply to an electing LEC.⁵ Under the LECs' interpretation, none of Sec. 3.2625 would apply to an electing company. The result would be absurd: an electing company's so-called competitors would be subject to all of the rate caps imposed by Sec. 3.2625 of PURA while electing companies would be free to price at any level they choose in the absence of real competition.

In matters of statutory construction the statute must be read as a whole. In addition, the more specific language is controlling over the more general. The only correct interpretation of the statute, read as a whole, is that electing companies have the ability to flexibly price services from payphones only to the extent a rate is not limited under Sec. 3.2625. The Commission should also note that Sec. 3.2625 (i) defines "provider of pay telephone service" as any provider, including an incumbent LEC, and makes no exception for electing companies.

LEC Exemption From Rate Caps in §23.54 (g)(1)(E)

As proposed, the provisions of §23.54 (g)(1)(E) exempt LEC payphones from limits on the amount that may be charged for credit or calling card or operator assisted calls. PURA Sec. 3.2625 (e) requires the PUC to set limits on credit card, calling card and operator assisted calls. The correct reading of PURA Sec. 3.2625 (e) is that rates for

⁴ The Commission should note that GTE/Contel have filed tariffs reducing the per call charges to private pay telephone providers. This is but one example of costs declining while the industry is seeking a substantial rate increase.

⁵ Tr. p. 12

these services charged by incumbent LECs are governed by the LEC's last rate case; rates charged by companies electing under Subtitle H are governed by that subtitle (for example, operator assisted calls fall into Basket II); and rates charged by other companies are capped under the provisions of that subsection.

Maximum Charges

We support the proposed provision in §23.54 (g)(2) which requires that maximum charges must include all fees, surcharges and other forms of compensation that will ultimately be charged to the end user. In other words, maximum charge must mean the maximum charge. The Legislature intended to impose cost caps, not loopholes.

Confinement Facilities

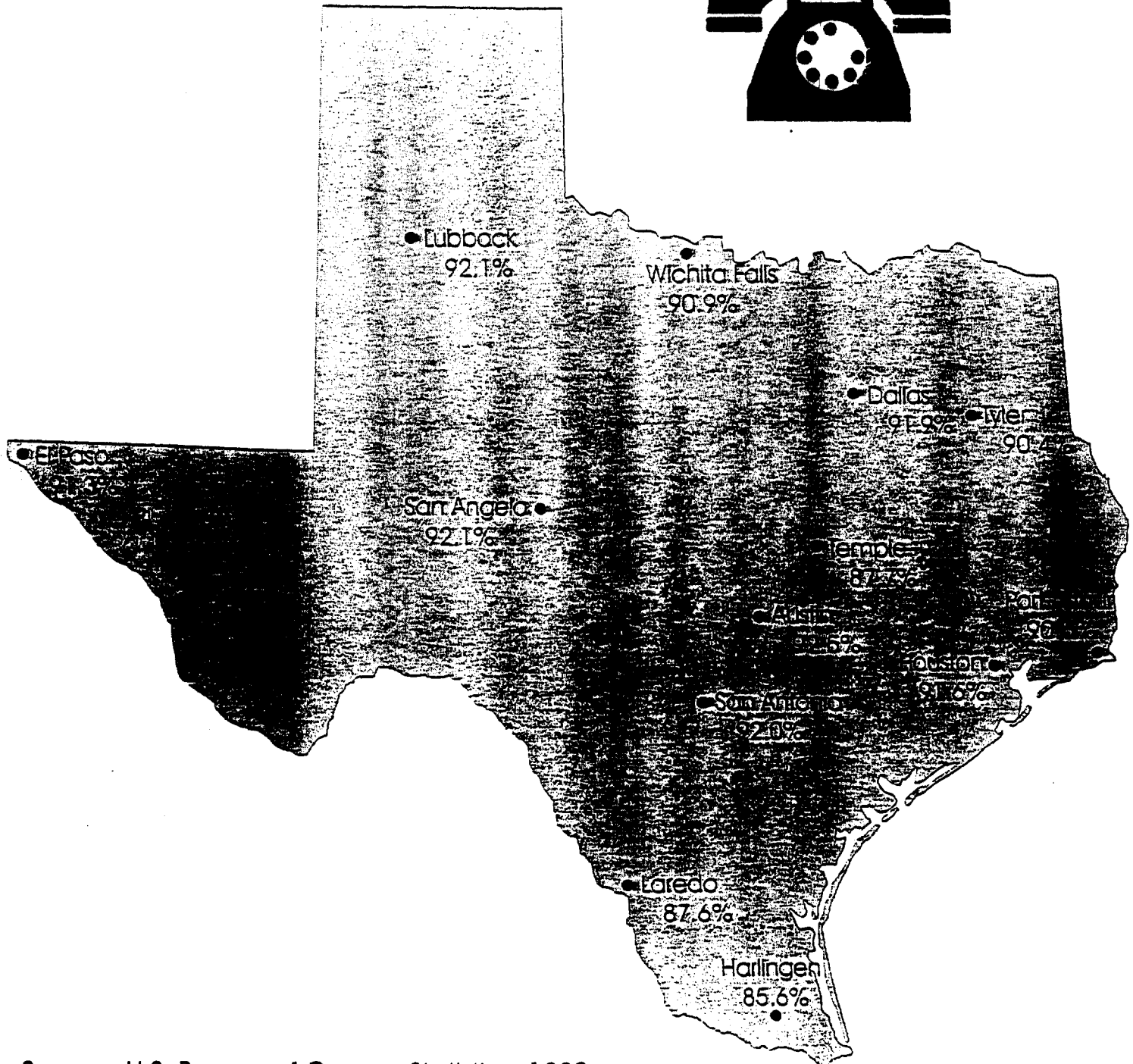
The proposed amendments exempts phones accessible to inmates of confinement facilities (prisons and local jails) from the rate caps and other consumer protections of this rule. Access to a phone is a legitimate issue for confinement facilities. Rate caps, posting and the like are consumer protection issues that should not be denied to anyone regardless of their circumstances. Consumers Union recommends the Commission delete the exceptions made for confinement facilities.

Exempting phones in confinement facilities from the consumer protections of Sec. 3.2625 of PURA punishes the families of inmates, not inmates. It is most common that a phone call made from a confinement facility will be charged to the called party. The families of prisoners are very likely to be of lower income. Family members should not be punished with additional costs. PURA Sec. 3.2625 was designed to protect members of the public from excessive charges.

In addition, the Commission does not have authority under PURA to exempt any payphone in any location from the provisions of the law. PURA makes no provision for exempting phones in confinement facilities from Sec. 3.2625.

If the Commission take oral comment on this rule Consumers Union requests the opportunity to make a statement.

Percentage of Households Subscribing to Telephone Service



Source: U.S. Bureau of Census Statistics, 1990
Prepared by Consumers Union

Millions of Children Disconnected at Home

5% of U.S. Households Had No Phone in 1990, an Improvement Over 1960 Census Findings

By Barbara Vobejda
Washington Post Staff Writer

Modern society's most basic communication tool—the telephone—is missing from the homes of millions of young children in this country, particularly poor, minority children, according to recently compiled census figures.

The statistics, say children's and consumer advocates, underscore the potential for poor children to be isolated from a range of services available by telephone, from latchkey hot lines to the next wave of technology, the new information superhighway.

A study of 1990 census figures prepared by demographer William P. O'Hare at the Annie E. Casey Foundation indicates that nearly 10 percent of children under age 6 live in homes without phones, but among black children, the figure is more than 20 percent and among Native American children, it rises to nearly 36 percent.

For children under 6 living in poverty, nearly 30 percent have no phone available, six times the figure for nonpoor children.

In a separate study released this week, the U.S. Census Bureau reported that, overall, 5 percent of American households—or about 5 million homes—were without telephones in 1990, down from 20 percent in 1960. The elderly were more likely to have phones, according to the study. Among the 50 states, residents of Mississippi and New Mexico were least likely to have phones.

Just over 4 percent of homes in the District were without phones, compared with 5.4 percent in Virginia and 3.2 percent in Maryland.

O'Hare's figures indicate that children in rental units, in immigrant families and in single-parent homes are much more likely to be without phones than other children. Just over 10 percent of children in married-couple families are without phones, compared with 22 percent of those with single parents.

While poor children and those in single-parent families may be those most likely to have no telephones, they are also those most in need of some services offered by phone, including homework tutoring and call-in help for latchkey children. Teachers are unable to call parents of these children, and working parents cannot check in to see that their children arrive home safely from school.

"Kids without a phone in their home are at a distinct disadvantage," O'Hare said.

Several experts have also raised the concern that if children are already cut out of basic telephone service, it is extremely unlikely they

CAN'T CALL OUT

CHILDREN UNDER AGE 6 WITHOUT TELEPHONES AT HOME

IN EACH RACIAL GROUP

Indian/Eskimo/
Aleutian Islanders

36%

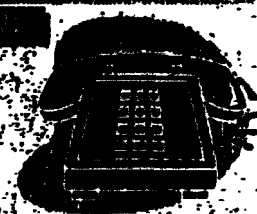
Black

Hispanics

White

Asian/Pacific Islanders

Other race



ECONOMIC STATUS

30% of children under age 6 not in poverty do not have a phone at home.

10% of children under age 6 living in poverty do not have a phone.

NOTE: Numbers are rounded

SOURCE: 1990 Census, Annie E. Casey Foundation

THE WASHINGTON POST

WASH. POST
8/19/94 pg A20
(2 pgs)

2

will have early access to the much more sophisticated array of technologies offered through an information superhighway. It could take decades for their homes and communities to gain such access. And that, experts said, could widen the class and educational gaps in society.

"Everyone should have access to a telephone," said Jeff Chester, executive director of the Center for Media Education. "This is the first step to insuring they won't be bypassed in the information age."

Chester's organization recently released a study with other groups charging that the initial plans of tele-

phone companies to install new communications networks indicated that poor and minority communities would be underserved.

Mary Gardiner Jones, president of the Alliance for Public Technology, said that, in planning for the new technologies, little priority has been given to ensuring access by the poor.

She said she could envision exciting educational programs using interactive and video technologies, but feared that schools in the poorest communities—where many children are also without telephones at home—would be the last to be able to tap in.

Susan Goldman, a psychologist and co-director of the Learning Technology Center at Vanderbilt University, said the lack of telephones at home makes it more important for poor children to be in well-equipped schools. But there is no indication, she said, that schools in poor neighborhoods will be given equal access to the new technologies.

"The gap is going to widen," she said. "Instead of information technology being a way to bring more and better educational opportunity to more children, it's going to be a way to increase the gaps between the haves and the have-nots."

FCC Seeks Comment on Initiatives to Increase Telephone Subscribership

The Federal Communications Commission has opened a proceeding to explore a variety of initiatives to increase telephone subscribership. While telephone subscribership in the United States averages 94%, certain segments of the population have much lower subscribership rates, and three states have average subscribership rates below 90%.

The Notice of Proposed Rulemaking (NPRM) recently adopted seeks comments on ways in which the market can work to reduce obstacles that prevent those who want telephone service from being able to afford it and help those with service to maintain it. The Commission stated that its review of non-subscribership data and the reasons for non-subscribership, together with the ever-broadening variety of services being offered, indicate that a combination of measures may offer the best opportunity to enhance individuals' ability to subscribe. The NPRM seeks, in particular, information on ways wireless and cable technologies can be used and will be avail-

able in the future to meet this goal.

According to several recent studies, a large percentage of those disconnected from the network once received telephone service. The NPRM identifies potential alternatives to help reconnect past subscribers disconnected for failure to pay long-distance charges and to help low-income subscribers stay connected. To help keep these subscribers on the network, the Commission is considering requiring Local Exchange Carriers (LECs) to offer interstate long-distance blocking at reasonable rates, and seeks information on LECs' ability to offer related services such as limiting interstate long distance usage to preset monthly charges or minutes of use. Alternatively, the Commission is considering whether to prohibit LECs from disconnecting local service based on nonpayment of interstate long-distance charges.

To promote reconnection of former customers who face the obstacle of large deposits, the Commission is seeking information on proposals to require carriers to

adjust deposit requirements for low-income subscribers if they agree to commensurate limitation of long-distance service.

The NPRM also seeks comment on ways to connect schools and libraries to the network. In addition, the NPRM seeks comment on how the marketplace can operate to make services such as voice mailboxes available to highly mobile low-income persons, and whether Link Up assistance should be extended to cover such services for low-income individuals not already telephone subscribers.

Action by the Commission July 13, 1995, by Notice of Proposed Rulemaking (FCC95-///).

Common Carrier Bureau contacts: Andrew Mulitz at (202) 418-0827, George Johnson at (202) 418-0866, Tim Peterson at (202) 418-0847.

Non-Subscribership Data

Although the overall subscribership rate is just under 94%, we find substantially lower rates for the following populations:

- African American households (1994)

85.7% have telephone service

- Hispanic households (1994): 86.0% have telephone service

- rural American Indians: about 50% have phone service

- less than 70% of households on Food Stamps have telephone service

- less than 60% of households completely dependent on welfare have phone service

- All unemployed adults (1994): 87.8 percent have telephone service

- All unemployed African Americans (1994): 81.1 percent have telephone service

- All unemployed Hispanics (1994): 84.1 percent have telephone service

Note: Items with "(1994)" are taken from 1995 Monitoring Report issued by the Commission in May 1995. Welfare and Food Stamp data taken from 1994 paper by Schement, Belinfante and Povich, "Telephone Penetration 1984-1994." Information on American Indians taken from NECA filing, 12-14-94, before FCC.



LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS
THE UNIVERSITY OF TEXAS AT AUSTIN

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THE EVOLUTION OF UNIVERSAL SERVICE IN TEXAS

John B. Horrigan
Lodis Rhodes

Who are the phoneless?

☎ The LBJ School surveyed 172 phoneless individuals in Texas, 70 percent in urban areas and 30 percent in rural areas. 88 percent had monthly incomes of less than \$1,200. 22 percent of respondents were white, 47 percent African-American, and 29 percent Hispanic.

Have the phoneless had telephone service in the past?

☎ Over three-quarters (77 percent) have had phone service in the past, and 54 percent had service within the past three years. Only 5 percent stated they did not want or need telephone service. 7 out of 10 phoneless people had service disconnected due to outstanding bills.

What are the barriers to the phoneless having service today?

☎ About 60 percent of respondents stated that long distance charges make service affordability difficult. 47 percent said use of the phone by others in the household created affordability problems.

☎ 60 percent stated that past outstanding bills, which average \$191 in Texas, prevented them from having service. Over half said that the \$150 reinstallation charge (if disconnected due to outstanding bills) would prevent them from getting service. Past bills must be paid before reconnection, even though the \$150 is waived for those who qualify for assistance programs.

☎ The affordability of local service is not a problem for most phoneless households. 33 percent said that the cost of local service was not a barrier to service.

Are they aware of universal service programs designed to help them?

☎ No. 69 percent were unaware of phone company programs to provide assistance. Of those who were aware, over half (52 percent) had heard of programs from friends or relatives, 12 percent from mailings, and 12 percent from social service agencies.

What is the communications behavior of the phoneless population?

☎ 65 percent use the phone to contact others, mostly by pay phone or from homes of friends or family. 6 percent have pagers. 75 percent expressed interest in toll blocking services, while 51 percent expressed interest in voice mail service only. As for other media, 95 percent have televisions, 40 percent have cable service, and 5 percent have home computers.

What are the policy implications of the LBJ School's findings?

☎ Phoneless people want *control* over their monthly phone expenditures, as evidenced by concern over variable long distance charges and the fact that many subscribe to cable, a certain monthly expenditure. Yet they also want *choice* of established and new services, as evidenced by cable and computer use. We recommend a credit card model for universal service, i.e., a prepaid card for qualified individuals that would prevent them from running up long distance bills.

Horrigan is a Ph.D. Candidate at the LBJ School of Public Affairs.

Rhodes is a Professor at the LBJ School of Public Affairs.

*More information about this report is available at the World Wide Web site of the
Alliance for Public Technology: <http://apt.org>*

TABLE 163 - COIN TELEPHONE RATES FOR MAJOR TELEPHONE COMPANIES

AGENCY	MAJOR TELEPHONE COMPANIES	COIN RATE
ALABAMA PSC	CONTEL OF THE SOUTH, GTE SOUTH, SOUTH CENTRAL BELL	.25
ALASKA PUC	ANCHORAGE TELEPHONE UTILITY, MATANUSKA TELEPHONE ASSOCIATION	.15
	GTE ALASKA, TELEPHONE UTILITIES OF ALASKA, TELEPHONE UTILS. OF NORTHLAND	.10
ARIZONA CC	CITIZENS UTILITIES, GTE WEST, INC., US WEST COMMUNICATIONS, NAVAJO	.25
ARKANSAS PSC	ALLTEL, GTE SW, SW BELL	.10 5/
CALIFORNIA PUC	CONTEL, GTE, PACIFIC BELL	.20
COLORADO PUC 10/	US WEST COMMUNICATIONS (FORMERLY MOUNTAIN BELL)	.25
CONNECTICUT DPUC	NEW YORK TELEPHONE, SOUTHERN NEW ENGLAND TELEPHONE, WOODBURY TELEPHONE	.25
DELAWARE PSC	DIAMOND STATE TELEPHONE COMPANY	.25
DC PSC	BELL ATLANTIC (FORMERLY CHESAPEAKE & POTOMAC TELEPHONE)	.25
FLORIDA PSC	CENTRAL TELEPHONE OF FLORIDA, GTE FLORIDA, SOUTHERN BELL, UNITED FLORIDA	.25
GEORGIA PSC	GTE, SOUTHERN BELL TELEPHONE	.25 4/
HAWAII PUC	GTE-HAWAIIAN TELEPHONE COMPANY	.25
IDAHO PUC	GTE NORTHWEST, US WEST	.25
	GEM STATE UTILITIES	.10
	NON-LEC PAYPHONES NOT REGULATED	
ILLINOIS CC	CENTRAL TELEPHONE OF ILLINOIS, AMERITECH-ILLINOIS	.25
	GTE ILLINOIS, ILLINOIS CONSOLIDATED TELEPHONE COMPANY	.20
	GTE NORTH	.35
INDIANA URC 6/	INDIANA BELL, GTE NORTH, UNITED OF INDIANA	.25
IOWA UB 1/	GTE IOWA, GTE NORTH, GTE SYSTEM OF IOWA, US WEST, VISTA	1/ Varies
KANSAS SCC	SOUTHWESTERN BELL, UNITED TELEPHONE	.25 3/
KENTUCKY PSC	GTE, CONTINENTAL, SOUTH CENTRAL BELL, CINCINNATI BELL, ALLTEL	.25
LOUISIANA PSC	CENTURY TEL., CAMPTI-PLEASANT HILL TEL., CAMERON TEL., CENTRAL LOUISIANA TEL.,	.25
	SOUTH CENTRAL BELL	.25
MAINE PUC	NYNEX (2 MINUTES CALLING LOCAL AREA LESS THAN 20 MILES)	.25
	OTHER INDEPENDENTS	0-.25
MARYLAND PSC	BELL ATLANTIC-MARYLAND (FORMERLY CHESAPEAKE & POTOMAC TELEPHONE COMPANY)	.25
MASSACHUSETTS DPU	NEW ENGLAND TELEPHONE & TELEGRAPH	.10 7/
MICHIGAN PSC	CENTURY TELEPHONE, GTE OF MICHIGAN/GTE SYSTEMS	.20
	MICHIGAN BELL TELEPHONE (1994)	.25
MINNESOTA PUC	VISTA TELEPHONE, CONTEL, GTE, US WEST, UNITED	.10-.25
MISSISSIPPI PSC	SOUTH CENTRAL BELL TELEPHONE COMPANY, 20 INDEPENDENT TELEPHONE COMPANIES	.25
MISSOURI PSC	GTE MIDWEST, ALLTEL, MISSOURI TEL., SW BELL, UNITED	.25
MONTANA PSC	US WEST (FORMERLY MOUNTAIN STATES TEL), CITIZENS TEL	.25
	NORTHWESTERN TELEPHONE SYSTEMS	.10
	NON-LEC PAYPHONES NOT REGULATED	
NEBRASKA PSC	GREAT PLAINS TELEPHONE COMPANY, GTE MIDWEST, LINCOLN TELEPHONE, UNITED	.25
	US WEST	.35
	NON-LEC PAYPHONES NOT REGULATED	
NEVADA PSC	NEVADA BELL, CENTRAL TELEPHONE, CONTEL, RIO VIRGIN	.25
NEW HAMPSHIRE PUC	NEW ENGLAND TELEPHONE	.10 9/
NEW JERSEY BPU	NEW JERSEY BELL TELEPHONE, UNITED TELEPHONE	.20
NEW MEXICO SCC	MOUNTAIN BELL (US WEST), GTE SOUTHWEST, BACA VALLEY TELEPHONE	.25
	CONTEL OF THE WEST	.20
	ALL OTHER INDEPENDENTS	.10
NEW YORK PSC	ALLTEL, NEW YORK TELEPHONE, ROCHESTER TELEPHONE, CONTEL	.25
	UPSTATE, CHENEGO & UNADILLA, IROQUOIS, WESTERN COUNTIES, RED HOOK	.10
NORTH CAROLINA UC	CAROLINA TELEPHONE AND TELEGRAPH, CENTRAL TELEPHONE	.20
	ALLTEL CAROLINA, SOUTHERN BELL, GTE SOUTH	.25
NORTH DAKOTA PSC	US WEST, NORTH DAKOTA TELEPHONE CO., SRT COMMUNICATIONS, INC.	.25-.35
	NON-LEC PAYPHONES NOT REGULATED	
OHIO PUC	CINCINNATI BELL TELEPHONE COMPANY, GTE, AMERITECH OHIO, UNITED TELEPHONE	.25
OKLAHOMA CC	ALLTEL OKLAHOMA	.10
	GTE SOUTHWEST, SOUTHWESTERN BELL TELEPHONE	.25
	SMALL INDEPENDENT TELCOS	.10-.25
OREGON PUC	US WEST, GTE-NW, UNITED OF THE NORTHWEST, PTI COMMUNICATIONS	.25
	NON-LEC PAYPHONES NOT REGULATED	
PENNSYLVANIA PUC	BELL OF PENNSYLVANIA, CONTEL, GTE, UNITED TELEPHONE	.25
	COMMONWEALTH TELEPHONE COMPANY	.10
RHODE ISLAND PUC	NEW ENGLAND TELEPHONE COMPANY	.15
SOUTH CAROLINA PSC	SOUTHERN BELL (HAS IMPLEMENTED 4-MINUTE TIME LIMIT)	.25 2/
	GTE, UNITED, CONTEL, ALLTEL	.25
SOUTH DAKOTA PUC	US WEST	.25
TENNESSEE PSC	SOUTH CENTRAL BELL, UNITED INTERMOUNTAIN, GTE SOUTH, ADAMSVILLE TEL.,	.25
	CLAIBORNE TEL., ARDMORE TEL., TENNESSEE TEL., COLTEWAH-COLLEGE DALE TEL.	.25
	ALL OTHERS	.10

TABLE 163 - COIN TELEPHONE RATES FOR MAJOR TELEPHONE COMPANIES

AGENCY	MAJOR TELEPHONE COMPANIES	COIN RATE
TEXAS PUC	CENTRAL TELEPHONE, CONTEL OF TEXAS, GTE SOUTHWEST, UNITED, SW BELL	.25
UTAH PSC	MOUNTAIN STATES TELEPHONE & TELEGRAPH CO. (US WEST)	.25
VERMONT PSC	CONTEL, NEW ENGLAND TELEPHONE, NORTHFIELD TELEPHONE	.10
VIRGINIA SCC	C & P TEL., CENTEL, GTE-VA, UNITED INTER-MOUNTAIN, OTHER	.25
WASHINGTON UTC	CONTEL NORTHWEST, GTE NORTHWEST, PACIFIC NW BELL (US WEST), TELEPHONE UTILITIES OF WASHINGTON, INC., UNITED TELEPHONE OF THE NW	.25
WEST VIRGINIA PSC	BA TELEPHONE, GTE SOUTH, GTE WEST VIRGINIA (CONTEL)	.25
WISCONSIN PSC	GTE, AMERITECH MOST INDEPENDENTS (REMAINDER OF INDEPENDENTS RANGE FROM .10 TO .20)	.35 .25
WYOMING PSC	US WEST (FORMERLY MOUNTAIN BELL) INDEPENDENTS	.35 8/ .25-.35
CANADIAN RTC	BELL CANADA, BC TEL, NORTHWESTEL, NEW BRUNSWICK TEL, NEWFOUNDLAND TEL, MARITIME TEL AND TEL, AGT LIMITED, ISLAND TEL	.25

FOOTNOTES - TABLE 163 - COIN TELEPHONE RATES

- 1/ Coin telephones have been deregulated in Iowa (rates vary).
- 2/ Ten cents at nursing homes, public elementary and secondary schools, city, county and state hospitals, Veterans Administration Hospital and government owned low-income housing projects.
- 3/ Only on dial-tone-first coin-phones; 10¢ on other coin phones.
- 4/ Twenty-six companies have 10¢ rate; 13 companies have 25¢ rate.
- 5/ Twenty-five cents for Texarkana, AR, due to jurisdictional reciprocity with Texas PUC.
- 6/ May be flexibly priced below tariffed rate.
- 7/ Privately owned coin telephones permitted effective 12/1/86 with untariffed local call rates.
- 8/ 25¢ at public schools.
- 9/ NET charges 10¢ for the first five minutes and 5¢ for each additional three minutes.
- 10/ Payphone industry deregulated.
- 11/ Commission did not respond to request for update information; this data may not be current.



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PUBLIC UTILITY COMMISSION
FILING CLERK

18 January 1996

Ms. Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, Texas 78757

RE: Project No. 14559

Dear Ms. Mueller:

Attached are 15 file copies of the Reply Comments of Consumers Union on Project No. 14559, relating to Pay Telephones. Please file stamp the extra copy for our records.

Sincerely,

Janee Briesemeister
Senior Policy Analyst





Publisher of Consumer Reports

**REPLY OF CONSUMERS UNION
TO THE TEXAS PAYPHONE ASSOCIATION
LOCAL COIN CALL CHARGE CAP PROPOSAL
(Submitted January 5, 1996)
AND TO COST FILINGS MADE IN
PROJECT NO. 14559**

18 January 1996

Consumers Union¹ submits the following reply comments on the proposal submitted by the Texas Payphone Association on January 5, 1996 in Project No. 14559 and to the cost filings made in Project No. 14559.

On January 5 the Texas Payphone Association (TPA) submitted a proposal to increase the local coin rate to a cap of 35 cents for a period of approximately one year, after which the cap would increase to 50 cents on April 1, 1997. Consumers Union opposes the proposal. An increase in the local coin rate is not justified for all of the reasons previously stated in our comments submitted in this rulemaking. In addition to our previous comments, we will respond directly to each of the seven points raised in TPA's January 5 filing and to the cost data filed in this project.

¹*Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education, and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with approximately 5 million paid circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.*



1. Cost filings submitted in this project are inadequate and do not justify an increase above a 25 cent cap.

TPA and GTE filed cost data in Project No. 14559. Southwestern Bell provided data to the Office of Regulatory Affairs under seal claiming confidentiality. The cost data that has been filed for public review is wholly inadequate to support a rate increase. The process adopted by the Commission does not give interested parties and Commission staff the opportunity to fully analyze and verify the cost information provided. Therefore, the Commission should not take into consideration the cost information filed or provided under seal when making its decision in this rulemaking and maintain the local rate previously set in LEC rate cases.

The cost data and the process adopted by the Commission are inadequate to support a rate increase in the following respects:

A. The process adopted by the Commission does not give interested parties and Commission staff the opportunity to conduct discovery on the cost data provided.

The Commission has allowed those parties seeking a rate increase to file unverifiable cost data as justification for a 100 percent rate increase. Although all interested parties were invited to file cost data, non-industry parties obviously do not have such data on hand. Despite the disparity in access to information, the cost data used in this proceeding is not subject to discovery. Further, information provided under seal is not open to public scrutiny, which is contrary to the public interest.²

For example, TPA presents an "average" payphone company derived from a sample representing one-tenth of its membership. The Commission has provided

² Southwestern Bell has offered to let Consumers Union view the information which is claimed to be confidential under terms of a protective order. Use of a protective order does not solve the fundamental problem that whatever information has been provided has been done so on a "trust me" basis, with no opportunity for further scrutiny. Furthermore, Consumers Union strongly objects to the use of "confidential" information in a rulemaking process.

interested parties no opportunity to request and review data from all providers. There is no way to determine whether the one-tenth of TPA's membership sampled is indeed a representative sample, or self-selecting high cost companies. TPA also has included in its "average" company costs associated with lease commissions, which TPA claims is proprietary information. TPA has provided "representative" costs for its "average" company, but there is no way for the Commission to determine the inputs used to determine those "representative" costs, and whether the "representative" costs constitute the mean, median, mode, a weighted average, or some other calculation. TPA admits in the documents filed that several of these cost components vary widely among providers depending on several factors. TPA has not given the Commission the opportunity to make its own determination as to what costs are reasonable and relevant.

The information provided by GTE is difficult to decipher, but varies significantly from that provided by TPA for what should be similar cost components. For example, GTE depreciates phone and booth at a rate of \$0.146 per call (\$42.25 monthly total divided by the reported monthly average number of local calls, 288), while TPA reports depreciation expense of \$0.08 per call. GTE reports maintenance (including coin collection expense) of \$0.103 per call (total of reported maintenance expense plus coin collection divided by the reported average number of calls per month) while TPA reports \$0.061 per call.

Although TPA and GTE use cost inputs which vary widely, both arrive at a cost per call of 39.4 cents. Southwestern Bell also claims to have a per call cost of approximately 40 cents (comments filed October 19, 1995, p. 5) The discrepancies in cost inputs indicate the industry may be trying to back out of a particular cost number, rather than providing accurate cost data to this Commission. It is also difficult to understand why a company like Southwestern Bell with huge economies of scale, and over 80,000 installed payphones, many of which must be fully depreciated, would have a per call cost almost identical to an independent operation. These are the kinds of questions the Commission should more fully explore before approving a rate increase.

B. Providing information under seal is not sufficient to ensure the cost data is reasonable and accurate.

Southwestern Bell has not filed data for public review, but provided information to the Commission staff under terms of a protective order. Consumers Union has been given the opportunity to review Southwestern Bell's confidential data under terms of the protective order.³ Consumers Union has not signed the protective order. We believe that giving staff and other parties the opportunity to review data under terms of a protective order is not sufficient to fully protect the public interest. Were Consumers Union to review the data provided under seal we would still have no opportunity to request discovery. Were we to have comments, questions or an analysis of the confidential data we would not be able to communicate those concerns through comments filed in this rulemaking.

It is insufficient, whether information is provided publicly or under seal, for the Commission to set a rate based on the data certain companies are willing to provide. The Commission, staff, and interested parties should be able to request and review the information that is necessary to determine a just and reasonable rate.

C. Without the ability to look behind the reported numbers, the Commission cannot determine if the cost data submitted reflect just and reasonable expenses.

The information provided by the industry is deficient in many respects, including, but not limited to the following:

- The information on file does not detail what costs are included in overhead and whether those costs are just and reasonable.
- The information filed does not provide sufficient information to determine if lease commissions are just and reasonable.

³ This data is currently the subject of an open records request filed by Consumers Union.

- The data does not account for revenue sources and does not reveal whether local calls made with calling cards, credit cards, and pre-paid calling cards are bringing in revenue far in excess of their costs.
- The Commission does not have data on the impact of new revenue from the 25 cent set use fee for 1-800 calls.
- Is the proper cost standard embedded, or long run incremental cost?
- What are the depreciation schedules used and are they reasonable?
- What are the opportunities, if any, for end users to make competitive choices with regard to payphone service?

D. All information before the Commission supports maintaining the 25 cent local coin rate.

- The payphone industry requested from the Legislature and received authorization to charge 25 cents per 1-800 call to compensate them for access to the network. Access to the network is the same, whether for a local call or 1-800 (if anything, the long distance call should incur greater costs) Therefore, 25 cents should also be sufficient to access to the local network, thus justifying a continuation of a 25 cent charge.
- The increased number of payphones in Texas indicates that providers are finding payphones a profitable business at the current 25 cent rate. (See the PUC's 1995 Status of Competition Report)
- The local message unit rate assessed to private payphones by Southwestern Bell and GTE has been reduced in recent months.
- The 25 cent rate for Southwestern Bell and GTE was set by the Commission in each company's rate case. Those companies did not seek an increase in local coin rates in their most recent rate cases.
- It is illogical for the industry to claim a local coin call costs between 39.4 and 40 cents and then say they are willing to accept a 35 cent rate. The industry's willingness to accept a supposedly confiscatory rate brings into serious question the credibility of their cost data.

2. A transition to 50 cents will not reduce public opposition to a 100 percent rate hike.

TPA offers its new proposal as a "transition" to 50 cents, assuming, we suppose, that the Commission is convinced that 50 cents is a just and reasonable rate. As stated above and in our previous comments, a rate increase is neither justified, nor just and reasonable. Consumers will not be fooled by a 10 cent rate increase immediately followed by a 15 cent rate increase a year later.

3. It is disingenuous for TPA members to justify a rate increase by saying they intend to pursue other revenue sources and/or cost reductions.

TPA states that its membership is "inclined" to pursue other state and federal remedies to reduce costs or increase revenue sources. It is unclear whether these new revenue sources would result in further increased costs for consumers. While Consumers Union supports the efforts of TPA to find cost reductions which could be passed on to consumers, TPA also does not commit to pass on cost savings. Regardless, under TPA's proposal a 100 percent rate increase is guaranteed to take effect April 1, 1997, reducing any incentive the industry may have to reduce costs. If there are cost savings to be had, we recommend the Commission explore those options before considering a rate increase. TPA has not offered to reduce its 50 cent coin cap once these new revenues and cost reductions are found.

4. TPA has not proven the payphone industry is in "critical need."

In any industry there are efficient and inefficient firms, profitable and unprofitable ones. Critics often complain that regulation does nothing but protect inefficient companies from true competition. TPA's request is a good illustration of that criticism.

TPA claims its members are in "critical need" of cash to cover operating costs. Investment reports by J.C. Bradford and Co., and Raymond James and Associates, Inc., recommend investors buy stock in Communications Central, once of the largest publicly

traded independent payphone companies in the nation.⁴ Raymond James and Associates reports payphones will be a "profitable and growing segment of the telecommunications industry through the rest of the decade." From the investment analysts' perspective the payphone industry itself is not in any "critical need." It is not in the public interest to raise payphone coin charges by 100 percent to subsidize inefficient providers in an otherwise healthy and growing industry.

5. National telecommunications legislation and related Federal Communications Commission rulemakings bear no relevance to the Texas proceeding, and if anything will increase payphone revenue, thus reducing the need for a 100 percent rate increase.

TPA recommends the Commission set a 50 cent rate effective April 1, 1997 to provide "an opportunity for the results of national telecommunications legislation and related Federal Communications Commission rulemakings to be known." If federal actions are at all determinative of what this Commission should do, then Consumers Union recommends the Commission do nothing until Congress and the FCC act. Pending federal legislation would require the FCC to develop a per-call compensation plan for all interstate and intrastate calls, including subscriber 800 calls. Again, TPA is not offering to forego the 50 cent rate cap after Congress and the FCC act, therefore its suggestion that a rate increase is necessary to provide an opportunity for Congress to act has no merit. If anything, the pending Congressional action is good reason to delay state action until the payphone provisions of the pending federal telecommunications legislation are known.

6. The Texas Legislature has recognized the need for a local coin cap and given the PUC the authority to set a local coin cap.

⁴ J.C. Bradford & co., Feb. 17, 1995; Raymond James and Associates, Inc., April 7, 1995. (These are lengthy reports obtained from a public electronic data base. Consumers Union will provide copies upon request.)